MCI Telecommunications Corporation

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Washington, DC 20006

February 16, 1999

EX PARTE

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S. W.
Room TWB-204
Washington, D.C. 20554

Re: In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98); Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147)

Dear Ms. Salas:

On Friday February 12, 1999, MCI WorldCom, Inc. submitted the attached information to Lawrence Strickling, Chief, Common Carrier Bureau of the Federal Communications Commission.

In accordance with Section 1.1206(b)(2) of the Commission's Rules, an original and one copy of the attachments are being submitted to the Secretary.

Very truly yours,

Bradley Stillman
Senior Policy Counsel
Strategic Advocacy

cc: Larry Strickling
Christopher Wright

MCI WORLDCOM, INC.
SEVEN CORE ELEMENTS MEET A STRICTER IMPAIRMENT STANDARD

Each of the core network elements defined in § 51.319 satisfies an impairment standard that furthers the objectives of the Act and is stricter than the one set aside by the Supreme Court. That is not surprising because all of them are items on the § 271 competitive checklist or are inherent in a checklist item, and because the FCC's Local Competition Order defined only the minimum set of critical network elements, leaving it to state commissions to determine whether additional important elements should be unbundled. In fact, the discussion of each of these seven elements in the Local Competition Order shows that the FCC generally found a significantly greater degree of impairment than the now-vacated standard required. The following discussion addresses only the seven elements in § 51.319 and does not deal with other elements that the Commission or state commissions should determine must be unbundled.

Loops. For the overwhelming majority of customers, the loop is a natural monopoly — the single most expensive and time-consuming element in local networks for CLECs to duplicate on a pervasive scale. It is economically infeasible and inefficient for new entrants to construct a second line except for a tiny fraction of all customers or to obtain access to loops from alternative sources, and CLECs need access to unbundled loops in order to compete to provide ubiquitous service in the foreseeable future. Local Competition Order ¶¶ 378, 380. That is why the loop is a § 271 checklist item, why the legislative history of the 1996 Act gives loops as an example of a UNE, why virtually all

parties, including a number of state commissions, agreed that the loop should be unbundled, and why the Commission concluded that access to unbundled loops is "critical" to local competition. *Id.* ¶¶ 377, 368. "[L]oop elements are, in general, not proprietary in nature under [the Commission's] interpretation of section 251(d)(2)(A)." *Id.* ¶ 388.

NIDs. In order to provide local service, a CLEC that installs its own loops "must" have access to the NID, and NID unbundling "addresses the most critical need of competitors that deploy their own loops — obtaining access to the inside wiring of the building." Local Competition Order ¶¶ 392, 396. Moreover, access to NIDs on an unbundled basis when CLECs lease unbundled ILEC loops is equally critical because it would be prohibitively expensive for new entrants to dispatch technicians to each and every customer premises to install a new NID, and it would be wasteful to impose on new entrants the cost of disconnecting loops and NIDs that are normally combined in ILEC networks and installing new, unnecessary, and redundant NIDs. *See AT&T v. IUB*, 1999 WL 24568 at *12-13 (discussing § 51.315(b)). No ubiquitous alternative sources of NIDs are available, and NIDs have no proprietary aspects. *See* Local Competition Order ¶ 393.

Switching. Consistent with the § 271 checklist and the legislative history of the 1996 Act, the vast majority of commenters, including CLECs and state commissions, supported classifying local switching as a UNE. Local Competition Order ¶ 398. Incumbents have over 20,000 local switches, *id.* ¶ 411, while CLECs have been able to

deploy only 300-400 switches through the end of 1998, and requiring new entrants "to replicate even a small percentage of incumbent LECs' existing switches prior to entering the market" would delay the benefits of competition. *Ibid.* Without access to ILEC switching, CLECs could not take practical advantage of unbundled loops to ILEC end offices where collocation is unavailable or economically infeasible, especially since CLECs cannot place switching equipment in collocation space. Defining the switching element to include vertical switching features permits CLECs "to compete more effectively by designing new packages and pricing plans." *Id.* ¶ 410 (citing Illinois commission order). "A competitor that obtains basic and vertical switching features at cost-based rates will have maximum flexibility to distinguish its offerings from those of the incumbent LEC by developing a variety of service packages and pricing plans." *Id.* ¶ 423 (footnote omitted). Unbundling switching thus decreases barriers to entry and accelerates the pace and intensity of new entry. *Ibid.* And of course switching functions "fall squarely within the statutory definition" of network elements. *AT&T v. IUB*, 1999 WL 24568 at *10. For these and other reasons, the Commission correctly concluded that access to unbundled switching is "necessary" within the meaning of § 251(d)(2)(A), even though it found no proprietary concerns with unbundling either basic local switching or vertical switching features. Local Competition Order ¶¶ 419-420.

Transport. As the Commission previously found, "the ability of a new entrant to obtain unbundled access to incumbent LECs' interoffice facilities, including those

facilities that carry interLATA traffic, is *essential* to that competitor's ability to provide competing telephone service." Local Competition Order ¶ 449 (emphasis added); *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Order on Reconsideration, 12 F.C.C.R. 12460, ¶¶ 34-35 (1997) ("Third Order on Recon."). Unbundling transport "would promote competition in the local exchange market" by increasing the speed with which competitors can enter, by avoiding "the much higher cost" of constructing all of their own facilities, and by "improv[ing] competitors' ability to design efficient network architecture." Local Competition Order ¶¶ 439, 441, 447. The cost of constructing dedicated facilities to end offices where a new entrant has few customers is prohibitive, and shared transport permits CLECs to "take advantage of the incumbent LEC's economies of scale, scope, and density." Third Order on Recon. ¶¶ 2, 35; *In re Application of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, Memorandum Opinion and Order, 12 F.C.C.R. 19985, ¶¶ 198-199 (1997) ("BA-NYNEX Merger Order"). Although CLECs have constructed facilities to some ILEC end offices and tandem switches, it has not yet proven to be cost-effective to build transport facilities to all ILEC switches, and even if the FCC revisits this conclusion as CLECs expand their customer base, Third Recon. Order ¶ 35, denial of access to unbundled transport would today materially diminish the ability of CLECs to provide ubiquitous service. Nor is there any basis to withhold transport from competitors based on proprietary considerations.

Local Competition Order ¶ 446; Third Recon. Order ¶ 33.

Signaling Systems. The FCC correctly found that access to the LECs' SS7 signaling system was "critical to entry in the local exchange market." Local Competition Order ¶ 479. CLECs cannot offer competitive service without access both to so-called "out of band" signaling and to the databases used to route calls through this signaling method. In any event, in findings that were not challenged in the courts, the FCC required access to these same systems under § 251(c)(2) because they are necessary for interconnection between CLEC and ILEC networks. Local Competition Order ¶ 478. Moreover, signaling systems are a checklist item, reflecting the legislative judgment that access to the ILECs' systems is a critical precondition to competition. While there is a limited market for SS7 signaling, many carriers, including in particular smaller carriers, find it technically feasible to access only the ILECs' SS7 signaling, so these carriers' ability to compete plainly would be impaired if access to the ILECs' signaling were denied. *See id.* ¶ 461. The Commission found that the SS7 protocols adhered to Bellcore standards and are not proprietary. *Id.* ¶ 481.

OSS. The Commission's finding requiring the unbundling of OSS was cited by the Supreme Court as "supported by a higher standard." *AT&T v. IUB*, 1999 WL 24568 at *10-11 (citing Local Competition Order ¶¶ 521-522). In fact, the Commission "consistently has found that nondiscriminatory access to these systems, databases, and personnel is integral to the ability of competing carriers to enter the local exchange

market and compete with the incumbent LEC." Second Louisiana § 271 Order ¶ 83; *see* BA-NYNEX Merger Order ¶¶ 193-194. Competitors today still are unable to offer competitive service because they cannot efficiently, reliably, and consistently communicate with the ILECs' own OSS for pre-ordering, ordering, provisioning, billing, and repairing network elements and services. There is no substitute for the ILECs' own OSS, and CLECs are entitled to access to this network element under any conceivable "impair" or "necessary" standard.

OS/DA. Both OS and DA are § 271 checklist items that Congress already has determined ILECs must share if there is to be competition. The ILECs alone own the databases that are at the heart of these services. Without access to OS/DA databases, no carrier could offer facilities-based competitive local service, because their customers would not be able to make use of standard operator and directory assistance functions. No doubt that is why the Commission determined these services are "critical to the provision of local service," and that competitors would be "significantly impaired" if they were denied access to these services. Local Competition Order ¶ 540.

PROPOSED QUESTIONS FOR NOTICE OF PROPOSED RULEMAKING FOR VACATED RULE 47 C.F.R. § 51.319

Standards for Determining Which Elements Should be Unbundled

In addition to the "necessary" and "impair" factors, what other factors, if any, should the Commission consider in determining whether to unbundle a particular element?

Should the Commission consider the extent to which access to an ILEC element will lead to more rapid competition? The extent to which lack of access to an ILEC elements will retard the speed of competition?

Should the Commission consider the extent to which access to an ILEC element will lead to more ubiquitous competition and/or more geographically widespread competition? The extent to which lack of access to an ILEC element will narrow the scope of competition?

To what extent should the Commission consider whether the definitions it adopts will be easy or difficult to administer?

Should the Commission consider the extent to which access to an ILEC element will allow competitors to differentiate their services from the ILECs' services? The extent to which the lack of access will limit competitors' ability to differentiate their services from the ILECs' services?

Should the Commission consider the extent to which access to an ILEC element is the only way competitors can share in the economies of scale, scope, and density of the ILEC network?

Should the Commission consider the extent to which CLECs have incentives either to obtain network elements from sources other than the ILECs, or to rely on the ILECs?

Should the Commission consider the extent to which consumers are likely to enjoy the benefits of competition, including lower prices, higher quality and better service, if a network element must be made available on an unbundled basis?

Should state commissions, to the extent that they have the ability to determine whether any additional elements must be unbundled, be required to undertake the same considerations set forth above?

Definitions of "Necessary," "Impair," and "Proprietary"

How should the Commission define "necessary," "impair," and "proprietary" as those terms are used in section 251(d)(2)?

To what extent should the Commission consider with respect to "impairment" and "necessity" whether a particular element is listed in the "competitive checklist" of elements

BOCs must provide under section 271(c)(2)(B) if they wish to offer in-region interLATA service?

The Supreme Court has directed the Commission, in defining these terms, to "tak[e] into account the objectives of the Act." 1999 WL 24568 at *9. In following this directive, what objectives should the Commission consider, and how should those objectives affect the Commission's consideration?

Should the Commission consider the dictionary definitions of "necessary," "impair," and "proprietary"? Should it consider judicial decisions interpreting those phrases? Past administrative uses?

Should the "necessary" standard be the same as, or more restrictive than, the "impair" standard? How do the two factors relate to each other?

What kinds of evidence should the Commission or state commissions consider as they address: (i) whether failure to obtain access to a particular element "impairs" a competitor's ability to provide telecommunications services it seeks to offer, (ii) whether a particular element is "proprietary," and (iii) whether access to a particular proprietary element is "necessary"?

Should the Commission consider evidence such as profitability studies in determining whether an element satisfies either the "necessary" or the "impair" standard?

Application of the Unbundling Standard -- General Considerations

Does the Supreme Court decision require the Commission to reconsider its previous decision to identify in a binding regulation a minimum list of network elements that incumbent LECs must offer on a nationwide basis? Should the Commission reconsider this decision in any event?

What would be the practical consequences if the Commission were to conclude that it itself would not identify which network elements should be unbundled?

Should the Commission identify network elements to be unbundled on something less than a nationwide and uniform basis? If so, what criteria should it use?

In making this decision, should the Commission consider the extent to which anything other than a nationwide rule would result in additional state or federal regulatory burdens, and the extent of and cost associated with such burdens?

If rules were not made on a nationwide basis, what is the potential for disparate decisions to result across regions? Within the same region? What would be the impact of disparate rules on a CLEC's ability to enter the local market or to provide ubiquitous service across the country or across a region?

What, if any, additional burdens would regulators face if unbundled elements were to be defined on anything less than a nationwide basis?

If the Commission identifies elements to be unbundled on something less than a nationwide basis, on what basis should elements be unbundled?

Can unbundling decisions be made on a CLEC by CLEC basis — or, more broadly, on any basis that is not all-encompassing — in light of the Supreme Court decision to uphold 47 C.F.R. § 51.809?

If the Commission decides to identify a nationwide set of elements that must be unbundled, should it nevertheless allow the states to excuse ILECs from these requirements under some set of circumstances? If so, what kind of showing should be required before a state could allow an ILEC to refuse to provide access to an unbundled element to which the Commission has required such access?

What are the potential administrative costs of such an approach and do they outweigh the potential benefits?

Should the Commission consider the extent to which any state-by-state variation would make it more difficult for national CLECs to offer service through unbundled network elements?

In determining whether access to a particular unbundled network element should be required, should the Commission apply the relevant factors only to the discrete network element being considered in isolation, or instead should they consider access in the broader context of the element's place in the telephone network?

Should the Commission consider whether ILECs require CLECs to collocate if they wish to make use of non-ILEC elements, and the cost, availability, and delay issues inherent in collocation?

If the Commission concludes that it should continue to define a set of network elements that should be unbundled, should it consider adding to the list contained in its previous order? If so, what additional elements should be considered?

How does the Supreme Court's decision affect the Commission's pending proceeding under section 706 of the Act? In particular, what additional considerations should the Commission undertake in light of its tentative conclusion that it should require the unbundling of packet switches, DSLAMS, and subloop elements?

Application of the Unbundling Standard -- Specific Network Elements

What network elements are proprietary, or contain proprietary components?

Is it sufficient that some firm has constructed some facilities in some areas that can provide the same function as an ILEC unbundled network element, or must there be sufficient

alternative sources to drive the price of the element to economic cost on a ubiquitous basis for all customers? Is that firm's willingness and/or ability to make those facilities available to all CLECs a relevant consideration? To what extent should the reliability of alternative source and/or customer acceptance of alternative sources be considered?

Local Loop.

Should the Commission continue to identify the local loop as a network element that must be unbundled?

What factors should the Commission consider in determining whether or not to identify the local loop as a network element that must be unbundled?

What weight should the Commission give to the fact that Congress identified local loop transmission as a network element in the Section 271 competitive checklist?

Are there any areas in the country in which there is a competitive market for copper or fiber loops? How many customers have a choice of copper or fiber loops, and where are these customers located?

To what extent, if any, should the Commission consider alternatives to the copper or fiber loop when it considers market alternatives to the ILECs' copper plant?

Are there features and functions that can be provided through copper or fiber loops that cannot now be provided through the various alternatives?

To the extent that CLEC loops cannot today offer the same ubiquitous coverage as the ILEC loops, what are CLEC plans to deploy loops in the future, how long would it take and how much would it cost to duplicate the coverage of the ILEC loops?

Does the Supreme Court's decision relate to the Commission's consideration of whether to require subloop unbundling?

Assuming access to the unbundled loop should be required, should the definition of the loop in the vacated Rule 319 be modified? If so, how and why?

Network Interface Device.

Should the Commission continue to identify the NID as a network element that must be unbundled?

What factors should the Commission consider in determining whether or not to identify the NID as a network element that must be unbundled?

How much would it cost a CLEC to make a service call to a residence or office to install its own NID because it is denied access to the ILEC's NID?

What access or rights of way difficulties might a CLEC encounter if it were required to use a NID other than the ILEC's NID? How prevalent would such difficulties be?

How would the lack of access to NIDs as an unbundled network element affect the ability of CLECs to serve customers in buildings with multiple occupants or tenants?

Assuming access to the unbundled NID should be required, should the definition of the NID in the vacated Rule 319 be modified? If so, how and why?

Switching Capability.

Should the Commission continue to identify switching capability as a network element that must be unbundled?

What factors should the Commission consider in determining whether or not to identify switching capability as a network element that must be unbundled?

What weight should the Commission give to the fact that Congress identified switching as a network element in the Section 271 competitive checklist?

How many CLEC switches currently are deployed? How many customers can those switches serve?

Do deployed CLEC switches provide the same features and functions as ILEC switches?

To the extent that CLEC switches cannot today offer the same ubiquitous coverage as the ILEC switches, what are CLEC plans to deploy switches in the future, how long would it take and how much would it cost to duplicate the coverage of the ILEC switches?

Does the inability of CLECs to collocate switching equipment that does not perform an interconnection function affect their ability to compete without access to unbundled switching?

Would CLECs be impaired if they were denied access to the vertical features of ILEC switches? How could CLECs offer comparable services to ILECs if they were denied access to the switches' vertical features?

Assuming access to unbundled switching should be required, should the definition of switching in the vacated Rule 319 be modified? If so, how and why?

Should access to packet switches be unbundled?

Please answer all of the relevant questions above in terms of packet switches.

Interoffice Transmission Facilities.

Should the Commission continue to identify both shared and dedicated interoffice transmission facilities as network elements that must be unbundled?

What factors should the Commission consider in determining whether or not to identify interoffice transmission facilities as a network element that must be unbundled?

What weight should the Commission give to the fact that Congress identified local transport as a network element in the Section 271 competitive checklist?

To what extent are alternative sources of either dedicated or shared transport currently available?

How much time would it take for CLECs or other providers functionally to duplicate the ILECs' network of interoffice transmission facilities?

What added costs or other problems, if any, would a CLEC incur if it were required to obtain transport from some source other than the ILEC?

Do the findings in the Commission's Third Report and Order support the conclusion that CLECs would be impaired if they were deprived of access to the ILECs' shared transport facilities?

Assuming access to unbundled transport should be required, should the definition of transport in the vacated Rule 319 be modified? If so, how and why?

Databases and Signaling Systems.

Should the Commission continue to identify databases and signaling systems as elements that must be unbundled?

What factors should the Commission consider in determining whether or not to identify databases and signaling systems as network elements that must be unbundled?

What weight should the Commission give to the fact that Congress identified databases and signaling systems as network elements in the Section 271 competitive checklist?

To what extent are there alternative sources to the ILECs' databases and related call signaling systems?

What added costs or other problems, if any, would a CLEC incur if it were required to obtain databases and signaling systems from some source other than the ILEC?

Are there technical concerns which would make it more difficult for certain CLECs to interconnect with third party databases and signaling systems as opposed to the ILECs' databases and signaling systems?

Does the Supreme Court's decision impact in any way on the Commission's judgment in the First Report and Order that ILECs must provide unbundled access to their databases and signaling systems pursuant to section 251(c)(2) of the Act?

Assuming access to unbundled databases and signaling systems should be required, should the definitions of databases and signaling systems in the vacated Rule 319 be modified? If so, how and why?

Operations Support Systems.

Should the Commission continue to identify operations support systems as elements that must be unbundled?

What factors should the Commission consider in determining whether or not to identify operations support systems as network elements that must be unbundled?

Does the Supreme Court's decision impact in any way on the Commission's judgment in the First Report and Order that the ILECs obligation to provide unbundled access to their operations support systems is a necessary part of their obligation to provided interconnection and access to other unbundled network elements?

Is there any way for CLECs to access network elements that the ILECs must unbundle without having access to the ILECs' operations support systems? If so, what are the additional costs and other difficulties that CLECs would face?

Operator Services/Directory Assistance Services.

Should the Commission continue to identify operator services and directory assistance services as elements that must be unbundled?

What factors should the Commission consider in determining whether or not to identify operator services and directory assistance services as network elements that must be unbundled?

What weight should the Commission give to the fact that Congress identified operator services and directory assistance services as network elements in the Section 271 competitive checklist?

To what extent are there alternative sources to the ILECs' operator services and directory assistance services?

To what extent are there alternative sources to the ILECs' operator services and directory assistance services databases?

What added costs or other problems, if any, would a CLEC incur if it were required to obtain operator services and directory assistance services from some source other than the ILEC?

Are there technical barriers to CLECs use of operator services and directory assistance services obtained from third parties or self-provided that are not present when these elements are provisioned from the ILEC?

Assuming access to operator services and directory assistance services should be required, should the definition of operator services and directory assistance services in the vacated Rule 319 be modified? If so, how and why?

DSLAMs.

Should the Commission identify DSLAMs as an element that must be unbundled?

What factors should the Commission consider in determining whether or not to identify DSLAMs as a network element that must be unbundled?

How many DSLAMs have the ILECs currently deployed in their network? How many do they intend to deploy this year?

How many DSLAMs have the CLECs currently deployed in their network? How many do they intend to deploy this year?

Is it technically feasible to unbundle access to the DSLAM?

What added costs or other problems, if any, would a CLEC incur if it were required to operate with DSLAMs obtained from some source other than the ILEC?

Other Elements

Should the Commission identify dark fiber as an element that must be unbundled? Why or why not?

Are there any other elements that should be unbundled? If so, what and why?